

REMARKS

Applicants' attorney thanks the Examiner for her comments. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested. Claims 1-66 are presented for the Examiner's consideration.

By way of the Office Action mailed July 3, 2003, Examiner Cross provisionally rejected Claims 1-66 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-47 of copending Application No. 09/977,546. As the Examiner's rejection is only of a provisional nature any action on the part of the Applicants would be premature. Should Application No. 09/977,546 issue prior to the present application, Applicants will examine the merits of the Examiner's provisional rejection at that time.

By way of the Office Action mailed July 3, 2003 the Examiner rejected Claims 1, 3, 14, 16-18, 22, 24-26, 28, 29, 31, 33-35, 29-39, 41 42, 44, 45, 47 48, 53, 55, 56, and 58-62 under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over US Patent Number 5,182,191 to Fan et al (hereinafter "Fan" or the "'191 patent"). This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

In making the above rejection the Examiner contends that Fan teaches a device including a carrier having two wells for receiving a specimen sample as well as two sample sticks for handling the specimen.

Applicants' attorney respectfully disagrees with the Examiner's contentions and the conclusion drawn therefrom. Applicants' attorney respectfully suggests the Examiner has misinterpreted at least one of the references cited in the Office Action. Specifically, Applicants' attorney respectfully submits that Fan fails to teach a well. Fan discloses specimen application areas 20 and more specifically receiving panel 14 and sample collecting panel 16, however, as disclosed the panels fail to provide the teaching or suggestion of a well. The panels must be folded on top of each other to produce a specimen application area which then provides for the transfer of a fluid to a receiving panel. The flat panels which make up the specimen application areas in Fan clearly differ from the well in the present application.

Further, although the Examiner makes reference to the sample sticks for handling the specimen discussed in Fan, Applicants respectfully submit that Fan fails to disclose, teach or suggest the limitations of the claims of the present invention. For example, the disclosure of Fan only provides for the two sample sticks to be torn away from the folded sampling device. It is clear

from the disclosure that the sample sticks of Fan are not nor are they adapted to be disposed about at least a portion of a well (see, for example, Claims 1, 17, 29 and 41) nor is there a cavity adapted to retain a specimen-handling tool so that the tool is disposed about at least a portion of the well (see, for example, Claim 55). As indicated in the Fan disclosure, the sticks of Fan are in a portion of the device which folds on top of the specimen application area. Where the cited reference fails to teach or suggest each of the claimed elements to one skilled in the art, the rejection must fail. Accordingly, it is respectfully submitted that the Examiner's rejection of Claims 1, 3, 14, 16-18, 22, 24-26, 28, 29, 31, 33-35, 29-39, 41 42, 44, 45, 47 48, 53, 55, 56, and 58-62 in view of Fan should be withdrawn.

By way of the Office Action mailed July 3, 2003, the Examiner also rejected Claims 5-13, 19, 20, 36-38, 50-52, 63, 65 and 66 under 35 U.S.C. § 103 as purportedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Fan in view of US Patent Number 3,653,389 to Shannon. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

In making the rejection the Examiner relies on her previous contentions with regard to Fan set forth earlier in the Office Action. The Examiner also states that "Fan fails to teach sample handling tools having a pair of cooperating arms attached to one another."

As discussed above the Fan patent fails to teach or suggest each and every element which is present in the claims of the present invention, and Shannon fails to provide a teaching or suggestion of the elements which Fan fails to teach or suggest. Where the cited references fail to teach or suggest each of the claimed elements to one skilled in the art, the rejection must fail. Accordingly, it is respectfully submitted that the Examiner's rejection of Claims 5-13, 19, 20, 36-38, 50-52, 63, 65 and 66 should be withdrawn.

By way of the Office Action mailed July 3, 2003, the Examiner also rejected Claim 64 under 35 U.S.C. §103(a), as being unpatentable over Fan in view of U.S. Patent No. 5,593,851 to Jackson (hereinafter "Jackson" or "the '851 patent"). Claim 64 depends from Claim 63. In making the rejection the Examiner states "Fan et al. does not provide a sample handling device having a fork at its end." The Examiner then contends that the disclosure of Jackson overcomes the lack of teaching in Fan; however, in the previous rejection the Examiner stated that "Fan fails to teach sample handling tools having a pair of cooperating arms attached to one another." Thus as discussed above the Fan patent fails to teach or suggest each and every element which is present in the claims of the present invention, and Jackson fails to provide a teaching or suggestion of the

elements which Fan fails to teach or suggest. Where the cited references fail to teach or suggest each of the claimed elements to one skilled in the art, the rejection must fail.

Again, as the Applicants have herein discussed the cited references in relation to Claim 63, Claim 64 is similarly distinguishable not only because of the patentability of the independent claim but also because of the combination of the subject matter of the dependent claim with its independent claim which makes each claim further distinguishable, and which is not taught or suggested by the cited references, singly or in combination. Accordingly, it is respectfully submitted that the Examiner's rejection of Claim 64 should be withdrawn.

By way of the Office Action mailed July 3, 2003, the Examiner also rejected Claims 2, 4, 21, 23, 30, 32, 43, 46, 49 and 57 under 35 U.S.C. §103(a), as being unpatentable over Fan in view of U.S. Patent No. 5,955,032 to Kelly et al. (hereinafter "Kelly" or "the '032 patent"). In making the rejection, the Examiner contends that "Fan et al does teach that collection cup may be attached to the device for holding larges volumes of sample"; however, Applicants' attorney respectfully submits that Fan fails to teach or suggest a collection cup as the Examiner suggests. The Examiner has provided no support for her statement regarding the collection cup.

Furthermore, notwithstanding the discussion immediately above, Claims 2, 4, 21, 23, 30, 32, 43, 46, 49 and 57 depend either directly or indirectly from independent Claims 1, 17, 29, 41 or 55 and recite the present invention in varying scope. As discussed above the Fan patent fails to teach or suggest each and every element which is present in the claims of the present invention and Kelly fails to provide a teaching or suggestion of the elements which Fan fails to teach or suggest. Where the cited references fail to teach or suggest each of the claimed elements to one skilled in the art, the rejection must fail.

Again, as the Applicants have herein discussed the cited references in relation to Claims 1, 17, 29, 41 and 55, Claims 2, 4, 21, 23, 30, 32, 43, 46, 49 and 57 are similarly distinguishable not only because of the patentability of the independent claims but also because of the combination of the subject matter of each of the dependent claims with their independent claim which makes each claim further distinguishable, and which is not taught or suggested by the cited references, singly or in combination. Accordingly, it is respectfully submitted that the Examiner's rejection of Claims 2, 4, 21, 23, 30, 32, 43, 46, 49 and 57 should be withdrawn.

Applicants have carefully reviewed the art cited against the present application. None of the cited references, either alone or in combination, discloses a composite construction which has the same or similar distinctive combination of features as set forth and claimed in the claims and it is this

Appl. No.: 09/977,547
Amdt. Dated: September 15, 2003
Reply to Office Action of: July 3, 2003

combination of elements which is clearly and patentably distinguishable over the cited art. All claims are believed to be patentably distinguishable over the cited references and in allowable condition. Applicants respectfully request the rejections of the claims under 35 U.S.C. §§ 102 and 103 be reconsidered and withdrawn in light of the preceding amendments and remarks.

For the foregoing reasons, the application and claims are believed to be in condition for allowance and such action is respectfully requested. However, should any questions arise with regard to this matter the Examiner is encouraged to contact the undersigned at (770)-587-7183.

Examiner Cross has objected to the drawings. It is requested that this objection be withdrawn in view of the Amendments submitted herewith.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 770-587-7183.

Respectfully submitted,

PETERSON ET AL.

By:



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CERTIFICATE OF MAILING

I, William W. Letson, hereby certify that on September 15, 2003 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By:



William W. Letson



ANNOTATED SHEET SHOWING CHANGES

"Systems For Diagnostic Testing"

Kristy Peterson et al.

Docket #17,162A - Serial No.: 09/977,547

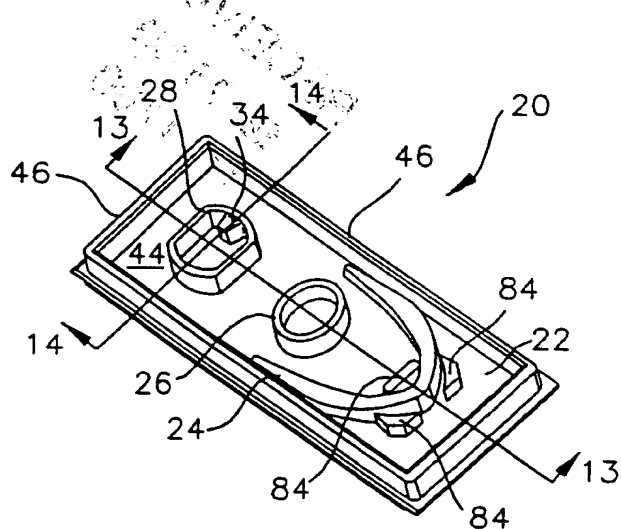


FIG. 12

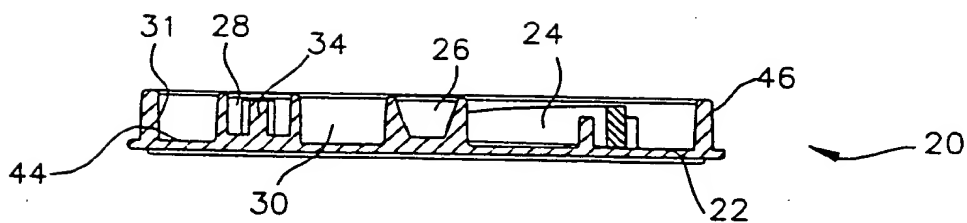


FIG. 13

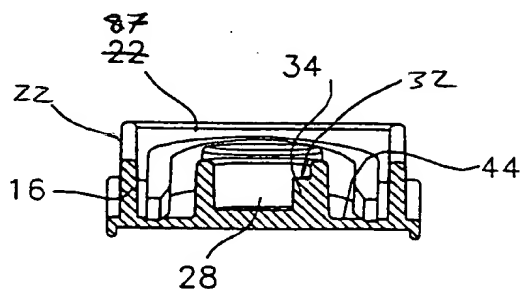


FIG. 14



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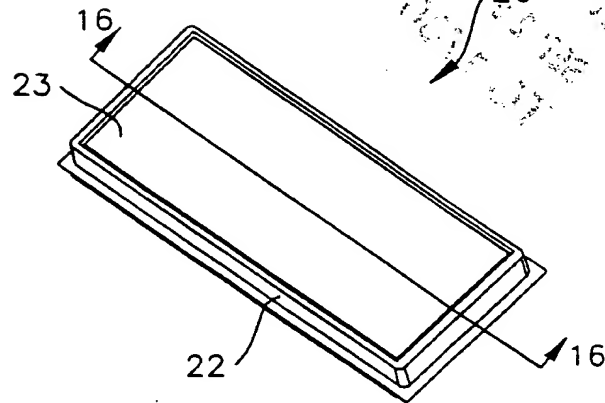


FIG. 15

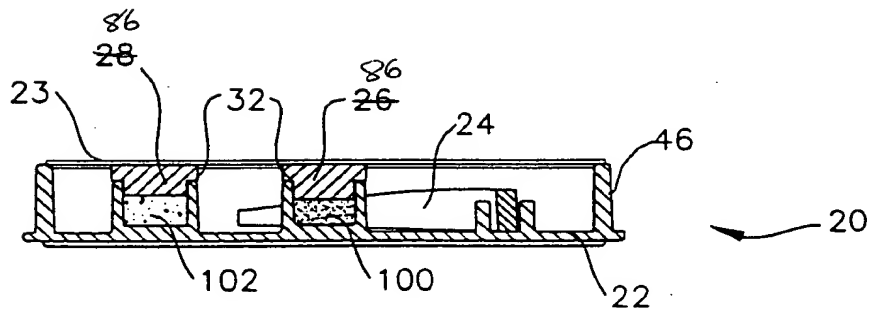


FIG. 16